

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DONALD LUMB,

Plaintiff,

vs.

BORDER PATROL SUPERVISOR PETE
BURGOS, et al.,

Defendants.

CASE NO. 15cv2623-LAB (MDD)

**ORDER REQUIRING RESPONSE;
AND**

**ORDER VACATING HEARING ON
MOTION TO DISMISS**

On November 10, Defendants moved to dismiss for failure to serve. They filed a brief and straightforward noticed motion, with a hearing date of December 12, 2016. The four-page motion is supported by a two-page declaration, and presents a single simple issue, arguing that Defendants have yet to be properly served. In view of this, as well as the case's age and Plaintiff's delays in serving Defendants, the Court believes that full briefing and a hearing on this issue is unnecessary and inappropriate. See Fed. R. Civ. P. 1 (directing courts to apply and administer the rules to secure the speedy determination of actions); Civil Local Rule 7.1(d)(1) (providing that judges may, in their discretion, decide a motion without oral argument).

The Court has reviewed the motion and it appears to be meritorious. Plaintiff Donald Lumb is therefore **ORDERED** to file a brief in opposition by **November 18, 2016**. His brief must not exceed five pages, not counting any attached or lodged materials. His opposition

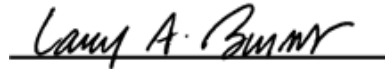
1 must either show that he has properly served Defendants as ordered, or else that there is
2 good cause for his repeated failures to obey the Court's orders.

3 It should be noted that this case has been pending for nearly a year, and Defendants
4 have yet to be served. In view of Lumb's lengthy delays and earlier failures to serve (see
5 Docket no. 6 at 2:5–18 (discussing Lumb's neglect of the case)), general appeals for more
6 time will not show good cause. See Fed. R. Civ. P. 4(m) (establishing "good cause" as the
7 standard); *see also Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007) (setting forth
8 factors district courts may consider when making discretionary determinations to extend time
9 to serve). If Lumb files a response, Defendants may file a reply brief, subject to the same
10 page limits, by **November 23, 2016**. After the required briefing has been filed, the matter
11 will be deemed submitted on the papers. **If Lumb fails to file an opposition when due,**
12 **or if his opposition fails to show why the motion should be denied, this action will be**
13 **dismissed without prejudice for failure to serve.**

14 The hearing currently on calendar for Monday, December 12, 2016 is **VACATED**.

15 **IT IS SO ORDERED.**

16 DATED: November 14, 2016

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18 **HONORABLE LARRY ALAN BURNS**
19 United States District Judge
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